

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-5031

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 76-5031

FRANCES SWINICK,

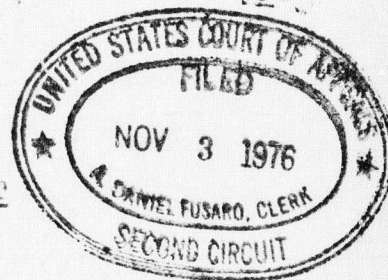
Appellant,

v

W. T. GRANT COMPANY,

APPELLEE,

BRIEF AND APPENDIX FOR FRANCES SWINICK, APPELLANT



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New Brunswick, NJ 08901

PAGINATION AS IN ORIGINAL COPY

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APPELLANT,

V.

W. T. GRANT COMPANY, ET AL

APPELLEES.

BRIEF FOR APPELLANT

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INDEX

	<u>Page</u>
STATEMENT OF ISSUES PRESENTED.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS.....	3
ARGUMENT.....	7
1. The denial of costs, expenses incurred as result requiring appellant to move to vacate stays, unjustified and unnecessary adjournments, etc., on the grounds that costs are not allowable in bankruptcy proceedings was an abuse of discretion, prejudice against pro se litigant and indigents and violation equal protection of the laws.....	7
II. The denial of oral argument on appeal in the New Jersey State Court was a violation equal protection of the laws, prejudice against appellant, catering favoritism to the appellee's and its attorneys, in direct contravention of the United States Constitution, decisions and all cases filed in the bankruptcy court in the instant case at bar in the same and similar circumstances, imposing unfair restrictions, oppressions, and suppressions upon the appellant due to prejudice, purposeful discrimination and punishment because she acted as her own attorney and her indigency.....	8
III. The orders regarding the National Labor Relations Hearing are without jurisdiction, void, invalid and unenforceable.....	10
IV. The orders, decisions denying appellant vacate the stay, deny oral argument on appeal, continue and proceed with the appeal as granted to all others in like and same and under like and same circumstances, are a violation of equal protection of the laws, malicious, purposeful discrimination, prejudiced and bias against appellant, contrary to laws, prior decisions and authorities and all orders, stipulations, etc., of cases filed in the bankruptcy court in the instant case at bar.....	11
V. The adjournment were delitery, delaying tactics to deny appellant prompt determination which was contrary to law and duties of the court below and for the malicious and wilful intent to harass appellant and cause her to incur unnecessary expenses and injure her in her claim and obstruct her from proceeding properly and fairly.....	16
CONCLUSION.....	17

AUTHORITIES CITED

	<u>Page</u>
Cases:	
20th Century v. Goldwyn, 328 F.2d 190, (85 S. Ct. 143, 379 U.S. 880.....	8
Airport Iron & Metal, Inc. (Unreported Decision, S.D.N.Y., 1974).....	11
American Buslines 151 F. Supp.877 (D. Neb., 1957).....	11
Barrett & Co. 27 F.2d 159 (D. C. Ga. 1928).....	14
Bell Mfg. Co. v. Cross 117 S. E. 196, 123 S. C. 567 (1923).....	12
Bokat Tidewater Equipment Co., 363 F.2d 667(C.A. 5, 1966).....	10
Buttrick v. Gardner 37 P 2d; 28 Am. Bankr Rep. N.S. 780 169 Okl. 566 (1934).....	12
Canada, 132 S. W. 754 (1910).....	13
Carey V. Westinghouse Electric Company 375 U.S. 261 (1964).....	11
Chicago Automobile Trade Ass'n v. Madden 328 F. 2d 766; cert.denied, 377 U. S. 979 (C.A. 7,1964).....	10
Coen v. Zick 458 F 2d 326 (1972).....	14
Cox 33 F. Supp. 796 (D. C. Ky 1940).....	15
Doolittle v. Mutual 249 F. 491.....	15
Durand v. N.L.R.B. 296 F. Supp. 1049 (D.C. Ark 1969).....	10
England v. American Trust Co. 267 F 2d 20 (C.A. Cal. 1959).....	8
Engram 156 F. Supp. 342, affirmed 249 F 2d 441 78 S. Ct. 561, 356 U. S. 91 (D. C. Ga. 1957).....	13
Family Small Loan v. Mason 67 F 2d 207; 23 Am Bankr Rep. N.S. 626 (C.C. A. Va. 1933).....	12
Fidelity Union Casualty Co. v. Hanson 44 S. W. 2d 985; 20 Am Bankr. Rep. N.S. 339; 53 S. Ct. 12; 287 U. S. 599 (1932).....	12
Franklin 106 F. 666; 6 Am. Bankr. Rep. 285 (D. C. Mass. 1901);.....	14

	<u>Page</u>
Friedman v. Zueifer 132 NYS 320, 74 Misc. 448 (1911).....	13
Hagt v. Freel N. W. 1869, 8 Abb Prac. N.S. 220.....	13
Harrison v. Donnelly 153 F 2d 588 (C.C.A. Mo 1946).....	13
Hartsfield Co. v. Newlin 176 S.E. 516, 49 G. A. App. 546 (1934).....	12
Het Calf v. Barker, 23 S. Ct. 67; 187 U.S. 165 47 L. Ed. 122; 9 Am Bankr Rep. 36 (1902).....	15
Hill v. Harding 107 U. S. 631; 2 S. Ct. 404.....	12
Horton 102 F. 986; 43 C. C. A. 87 (Neb. 1900).....	14
Howard 130 F 2d 534 (C.C.A. Ala. 1924).....	16
Industrial Sound Engineering Inc. 230 F. Supp. 154.....	8
Jaco v. Baker 148 P 2d 938 174 or. 191 (1944).....	12
Jensen 218 F 2d 896 (C.S.N.C. 1955).....	11
Johnson v. Waxelbaum 58 S. E. 56 (1907).....	13
McBryde, 99 F. 686.....	12
Het Calf v. Barker, 23 S. Ct. 67; 187 U. S. 165; 47 L. Ed. 122; 9 Am. Bankr Rep. 36 (1902).....	12
Metz 6 F 2d 962 (C.D. A. N.Y. 1925).....	12
Mid-Jersey National Bank v. Fidelity Mortgage Investors NYLJ page 1 February 23, 1976.....	14
Morton v. Switzer 93 U.S. 355.....	14
Motion V. Universal 232 F. 263.....	8

Myers v. Shipbuilding 303 U. S. 41 (1938).....	10
Nathanson Trustee W. N.L.R.B. 194 F 2d 248 (C. A.1, 1952).....	11
Newport News Shipbuilding Drydock Co. v. Schauffer 303 U. S. 54 (1938).....	10
Northern 192 F 2d 139.....	8
N.L.R.B. V. Baldwin Locomotive 128 F 2d 39 (C.A. 3, 1952).....	11
N.L.R.B. v. Bacheldaw 120 F 2d 574.....	11
N.L.R.B. v Schertzer 360 F 2d 152 (C.A. 2, 1966).....	11
New York v. Worcester Exp. Inc. 294 F. Supp. 1163 (C.C.N.Y. 1968).....	11
Norman Finance Thrift Corp. v. Securities & Exchange Commission 415 F 2d 1199 (C.A. Okl 1969).....	16
Peoples Loan & Inv. Co. 410 F 2d 851 (C.A. Ark 1969).....	16
Realty 53 F. Supp. 1013.....	8
Ress v. Jensen 170 F 2d 348.....	13
Robinson v. Early 56 Cal. Reprtr 183, 248 S. S. 2d 22.....	13
Sears Roebuck Co. v. N.L.R.B..... 433 F 2d 210 (C.A. 6, 1970).....	10
Smith Steel Workers V. A. O. Smith Corp 420 F. 2d 1 (C.A. 7, 1965).....	11
Smith v. Meisenheimere 47 S.W. 1087, 104 Ky. 753 (1898).....	12

	<u>Page</u>
United Aircraft Corp. v. McCulloch 365 F. 2d 960 (C.A. D.C. 1966).....	10
United Wireless Telegraph Co. 192 F. 238; 27 Am Bankr Rep. 1 (D.C. N.J. 1911).....	12
Wendell 152 F. 672.....	8
Wegiel v. Hogan, 100 A 2d 349; 28 N.J. Super. 144 (1953).....	13
Weiser 19 F. Supp. 786 (D.C. N.Y. 1937).....	12
Webcor Inc. 392 F. 2d 893; 89 S. Ct. 113; (C.A. Ill. 1968) 393 U. S. 837; 21 L. Ed. 2d 107.....	16
Yates 114 F. 365 (D.C. Cal. 1902).....	12
 Statute:	
Rule 54 (b) 28 U.S.C.A. Fed. Rules Civ Procedure.....	8
National Labor Relations Act 29 U.S.C. Section 151 et seq Section 10 (a) (e)(f).....	10
U. S. C. A. Title 11	12

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 76-5031

FRANCES SWINICK,

Appellant,

V.

W. T. GRANT COMPANY ET AL.,

Appellee

BRIEF FOR APPELLANT

STATEMENT OF ISSUES PRESENTED

1. Whether the denial of costs, expenses incurred was an abuse of discretion, due to the requirement compelling appellant to institute action vacating the wrongful stay, due to harassment and unnecessary adjournments and delays intentionally and maliciously causing appellant to incur unnecessary traveling expenses, sitting in court, income and termination from her Ceta Educational Training and causing appellant to become ill, sitting in a drafty court room, incurring medical expenses in the amount of \$40.00.

2. Whether the denial of oral argument and proceed in the appeal in the state court of New Jersey in a further appeal was an abuse of discretion, prejudice and conspiracy to violate appellant's United States Constitutional Rights, catering favoritism, in direct contravention of the United States Constitution, Equal Protection of the Laws, authorities, decisions and other cases filed in court in the instant actions and other cases, imposing unfair

restrictions, oppressions and suppressions from proceeding in same and equal manner as granted to all others in like and similar circumstances, due to purposeful discrimination, malice, strong prejudice, bias and punishment against appellant because she acted and acts as her own attorney and due to her indigency.

3. Are the Orders regarding the National Labor Relations Board Hearing void, invalid and unenforceable because the bankruptcy judge had no jurisdiction as such the bankruptcy judge acted without jurisdiction.

4. Was the order, decision, etc., of Judge Galgay of August 24, 1976, enjoin ing appellant from proceedings with the National Labor Relations Board hearing without jurisdiction, with malice intent, prejudice and discrimination against appellant, invalid, void, contrary to laws, decisions and authorities of the higher courts.

5. Was the order, decisions, etc., of Judge Galgay of August 24, 1976, denying appellant to vacate the stay and proceed with her appeal in the New Jersey State Court in violation of equal protection of the laws as granted to all others in like and similar circumstances, and all others in the same case, out of malice, prejudice and bias against appellant and punishment because she acted and acts as her own attorney and is an indigent.

STATEMENT OF THE CASE

This is an appeal from orders of the United States Bankruptcy Court for the Southern District of New York, entered February 11, 1976, and March 10, 1976, and August 24, 1976, (Judge John J. Galgay) vacating stays and permitting appellant appellant to proceed with the National Labor Relation Board Hearing and permitting appellant to proceed with the State of New Jersey action on appeal to the extent only in the Appellate Division, and no further, without oral argument, and from and order August 24, 1976, modifying the February 11, 1976, and

March 10, 1976, orders, restraining appellant from proceeding with the National Labor Relations Board Hearing and denying appellant from proceeding with the New Jersey State Action, and denying costs.

Appellant was granted leave to appeal as an indigent.

STATEMENTS OF THE FACTS

December 29, 1975, appellant filed and served a summons, notice of trial, complaint and petition for relief from all pending stays(A: 1-4) order (A:5) and a letter to Judge John J. Galgay dated December 26, 1975, (A:6) and paid a \$15 Fee. (A:7).

About January 22, 1976, an answer was served and filed. (A:8-11). Appellant served and filed a reply on January 26, 1976. (A:12-13).

On January 26, 1976, the date of hearing, the W. T. Grant's Attorney, Theodore Gewertz, requested an adjournment. Judge Galgay indicated that he is inclined to grant the relief, however, granted an adjournment to February 2, 1976.

February 2, 1976, the attorney, Theodore Gewertz, did not appear, Judge Galgay was late, appellant was on time, even though she had to travel from New Jersey, sitting in court many hours subjected to the draft and cold. As result she got the flu and had to expend approximately \$40.00 medical expenses.

The substitute attorney, Lawrence Cherkis, argument was the same as on the prior hearing, however, consented to the continuation of the National Labor Relations Board proceedings only and requested another adjournment to March 1, 1976. Upon appellant requesting costs, etc., Judge Galgay indicated that no costs are allowed in bankruptcy cases.

February 7, 1976, appellant wrote a letter to Judge Galgay and attached a brief (A:14-19) requesting modification or reconsideration of the erroneous

decision, denying costs, expenses, etc., and requesting an immediate determination and that appellant be excused from the requirement of appearing unnecessarily in court March 1, 1976, the adjourned date, which adjournment is an injustice, harassment, purposeful to cause appellant incur unnecessary expenses, denial equal protection of the laws, punishment for acting pro se and because of her indigency, to discourage her from enforcing, exercising and asserting her rights and to deny her access to the courts and because of her sex; and to keep her in bondage, by unnecessarily sitting in court, prevent her from attending to her important matters necessary for her economic safety, to frustrate and obstruct her in her rights, and that a simple proceeding, as the instant one at bar, should not be premitted to be delayed, dragged out but an immediate and prompt determination made, and attached a brief in support showing costs are allowed in bankruptcy cases, also citing authorities that bankrupt is not released from liabilities for wilful and malicious injuries to the person or property, that bankruptcy court is unauthorized to stay proceedings in State Court suit in action of Tort, since tort liability is not released or discharged and which punitive damages may be awarded, etc., and that courts duty is to determine whether debt dischargeable, if not it was improvident to grant stay, that a bankruptcy of a party does not prevent the hearing and determination of an appeal from a judgment of a State Court and the Court of bankruptcy will not order a stay of proceedings on appeal and that a stay cannot be granted against bankrupt jointly with others or in case several joint defendants, as in the instant case at bar, pending suit in State Court, etc., will not be stayed.

Also that the duty of a bankruptcy judge is to determine promptly; and that postponement of determination issues was abuse of discretion.

The February 7, 1976, letter and brief were ignored and a proposed order was served and filed which appellant served and filed an objection to the form of order(A:20) which objection was ignored and the order signed February 17, 1976, and filed February 19, 1976. (A: 21 a and b).

A letter to Theodore Gerwertz dated February 27, 1976, was served and filed indicating errors and citing an authority, Durand V. N.L.R.B. D. C. Ark (1969) 296 F. Supp. 1049, which shows that congress has not seen fit to insulate receiver or trustee in bankruptcy from jurisdiction of N.L.R. B. under N.L.R. Act, Section 151 et seq of Title 29 and as far as unfair labor practices are concerned, jurisdiction N.L.R. B. under said act and section and title is exclusive, subject to review by the Federal Appellate Courts and that bankruptcy courts are without jurisdiction and cited an article regarding bankruptcy published in the N.Y.L.J. February 23, 1976. (A:22).

Appellant appeared on March 1, 1976, and served an affidavit showing that she had to appear elsewhere.

About March 3, 1976, a proposed order was served, which appellant served and filed objection to the form of order as in violation of my rights contrary to law, harrassing, in abuse of discretion and in direct contravention with authorities and decisions of the United States Supreme Court. (A:23).

On March 10, 1976, Judge Galgay signed the order showing that upon the consent of counsel for Grant to the continuation of the N.L.R.B. proceedings and the continuation of the New Jersey action on certain conditions, it was ordered that the stay was vacatned only to the extent that they shall not operate to prevent the N.L.R. B. proceeding from continuing in accordance with the said decision of the Court of Appeals fro the Third Circuit and that they shall not operate to prevent the Superior Court of the State of New Jersey, Appellate Division from determining the appeal now pending before it on

the basis of the ~~briefs~~ without oral argument and costs denied. (A:24-25).

Upon the New Jersey Appellate Division affirming the lower court, Appellant proceeded to the Supreme Court of New Jersey. A letter was written to the New Jersey Supreme Court Clerk by Grant's Attorney, William Rochelle III, indicating that the March 10, 1976, order by Judge Galgay only modified to permit Appellate Division to decide and did not authorize appellant to press appeal to the Supreme Court. (A:26-27 a and b). Therefore, appellant is stayed and enjoined from proceeding with an appeal to the New Jersey Supreme Court. As result appellant received a letter from the New Jersey Supreme Court Clerk indicating that it appears all proceedings in the State of New Jersey Court are enjoined, therefore, unable to process appellant's petition for certification.

Therefore, appellant filed and served a summons and notice of trial again, complaint and petition for relief from all pending stays dated July 19, 1976, and a proposed order, (A:28-31) and William J. Rochelle, III, the attorney for Grants, sent appellant a letter indicating receiving same and that Judge Galgay set the hearing for August 24, 1976. (A:32).

An answer and counterclaim were filed and served requesting dismissal of the complaint in its entirety, vacating the order of March 10, 1976, to the extent that the said order permitted appellant to continue her prosecution of the National Labor Board Proceeding. (A:33-39).

Appellant served and filed a reply to the answer and an answer to the counterclaim. (A:40-42).

Judge Galgay on August 24, 1976, denied appellant's requests to vacate the stays and granted the counterclaim and enjoined appellant from proceeding with the National Labor Relations Board Hearing and denied appellant from proceeding with the appeal in the New Jersey Supreme Court.

The Grant's Attorney, William Rochelle III, failed to submit an order for Judge Galgay to sign up-to-date, for the purpose that a written and signed order be filed and served, with the wilful intent to commit a conspiracy to violate my rights, etc.

It is from all the above-mentioned that appellant appeals.

ARGUMENT

I THE DENIAL OF COSTS, EXPENSES INCURRED AS RESULT REQUIREING APPELLANT TO MOVE TO VACATE STAYS, UNJUSTIFIED AND UNNECESSARY ADJOURNMENTS, ETC., ON THE GROUNDS THAT COSTS ARE NOT ALLOWABLE IN BANKRUPTCY PROCEEDINGS WAS AN ABUSE OF DISCRETION, PREJUDICE AGAINST PRO SE LITIGANT AND INDIGENTS AND VIOLATION EQUAL PROTECTION OF THE LAWS.

At the January 26, 1976, hearing, Judge Galgay stated that he is inclined to grant appellant's request, vacating the stays, however, without good cause or excuse granted appellee's application for an adjournment. (1/26/76 Trans.)

Prior proceedings before Judge Galgay, as indicated by the voluminous records filed in the bankruptcy court clerk's office, proves that he is aware that under the laws there was no legal excuse or good cause not to grant the relief promptly and no excuse or good cause for the adjournments since all other litigants in like and similar circumstances, as the one at bar, the stays were vacated and were granted permitting continuation and prosecution of the actions and any subsequent appeals, writs of review, etc., therefore, the the grounds given by Judge Galgay that costs are not allowable in bankruptcy proceeding and the adjournments were to cause hardships and unnecessarily cause appellant, an indigent, incur expenses, deny her equal protection of the laws, harass her, discourage her from enforcing, exercising, as-

serting her rights, to act as her own attorney, to discourage her from petitioning the government for redress of her grievances, access to court, to sue and to punish her for so doing because of her indigency and strong prejudice against pro se litigants and women acting as their own attorneys.

Appellant's February 7, 1976, letter (A:14-19) and brief in support was ignored, showing that denial of costs on the grounds that costs are not allowable in bankruptcy proceedings is erroneous. Wendell, 152 F. 672, 192 F 2d 139; the court granted costs in bankruptcy proceedings. Northern Motion V. Universal 232 F. 263 held docket fees are costs. Realty 53 F. Supp. 1013, docket fees ordinary statutory cost taxable against unsuccessful party and that civil action cognizable as a case in equity as used in General Order 34, respecting taxing of costs of bankruptcy proceedings against unsuccessful party. Industrial Sound Engineering Inc. D.C. Wis. (1964) 230 F. Supp. 154 bankr. (18) Rule 54 (b) 28 U.S. C. A. Fed. Rules Civ Procedure. Successful plaintiff costs and expenses not abuse of discretion. 20th Century v. Goldwyn, 328 F 2d 190, 85 S. Ct. 143, 379 U. S. 880. Benefit bankrupt is immaterial to question whether creditor who opposes granting discharge and is successful is entitled reimbursements, reasonable expenses. England v. American Trust Co. C. A. Cal. (1959) 267 F 2d 20 and creditor was entitled to reimbursement his costs and expenses incurred.

In view of the cited authorities cited and the unwarranted adjournments, the denial of costs was an abuse of discretion, prejudice against appellant because she acted pro se and her indigency.

II THE DENIAL OF ORAL ARGUMENT ON APPEAL IN THE NEW JERSEY STATE COURT WAS A VIOLATION EQUAL PROTECTION OF THE LAWS, PREJUDICE AGAINST APPELLANT, CATERING FAVORITISM TO THE APPELLEE'S AND ITS ATTORNEYS, IN DIRECT CONTRAVENTION OF THE UNITED STATES CONSTITUTION, DECISIONS AND ALL CASES FILED IN THE BANKRUPTCY COURT IN THE INSTANT CASE AT BAR IN THE SAME AND SIMILAR CIRCUMSTANCES, IMPOSING UNFAIR

RESTRICTIONS, OPPRESSIONS, AND SUPPRESSIONS UPON THE
APPELLANT, DUE TO PREJUDICE, PURPOSEFUL DISCRIMINATION
AND PUNISHMENT BECAUSE SHE ACTED AS HER OWN ATTORNEY
AND HER INDIGENCY.

The voluminous record, orders, stipulations, etc., on file in the
bankruptcy court in the instant case at bar shows that all litigants who were
represented by attorneys were permitted to continue their state court actions
by prosecution, appeals with oral argument, subsequent appeals or writs of re-
view, etc., which the same was denied to appellant, showing that the denial
of oral argument on appeal in the state court was a violation of equal pro-
tection of the laws, strong prejudice against appellant because she acted
pro se, denying her the same protection as granted to attorneys, catering
favortism to appellee's and its attorneys, in direct contravention of the
orders, stipulations, decisions, imposing unfair restrictions upon appellant,
oppressing and suppressing appellant and discriminating against appellant
and punishing her because she did not have an attorney and she is indigent,
treating her differently than attorneys, therefore, the denial of an oral
argument on appeal as afforded to all others represented by attorneys was
a violation of the United States Constitution, equal protection of the laws,
and in direct contraventions of the laws, decisions and authorities.

III THE ORDERS REGARDING THE NATIONAL LABOR RELATIONS HEARING
ARE WITHOUT JURISDICTION, VOID, INVALID AND UNENFORCEABLE

Appellant's letter dated February 27, 1976, served and filed, shows errors made by Judge Galgay's decision and order in that the authority, Durand v N.L.R.B. D C Ark (1969) 296 F. Supp. 1049, cited, held that congress has not seen fit to insulate receiver or trustee in bankruptcy from jurisdiction of NLRB under National Labor Relations Act, Section 151 et seq, Title 29 as far as unfair labor practices are concerned jurisdiction of NLRB under said act, section and title is exclusive, subject to review under Section 10 (e) and (f) of said act by Federal Appellate Courts and that the Federal District Court, including bankruptcy courts are without jurisdiction.

The automatic stay does not apply to proceedings conducted by the board under the exclusive jurisdiction of the NLR Act, 29 U.S.C. 151 et seq, since it is a firmly settled principle that Federal District Courts, including bankruptcy courts, are without power to enjoin the board from conducting unfair practice proceedings. Myers v. Bethlehem Shipbuilding Corp. 303 U.S. 41 (1938); Newport News Shipbuilding & Drydock Co. v. Schauffler, 303 U.S. 54 (1938); Bokat Tidewater Equipment Co., 363 F. 2d 667 (C.A.5, 1966); Sears Roebuck Co. V. N.L.R.B. 433 F. 2d 210 (C.A.6, 1970); Chicago Automobile Trade Ass'n. V. Madden; 328 F. 2d 766, 768-769 (C.A. 7, 1964), cert. denied, 377 U.S. 979; United Aircraft Corp. v. McCulloch, 365 F. 2d 960, 961 (C.A.D.C., 1966). As the Supreme Court explained in Myers v. Bethlehem, supra, 303 U.S. at 48, a district court lacks jurisdiction "because under Section 10 (a) of the NLRA the power' to prevent any person from engaging in any unfair labor practice affecting commerce,' has been vested by Congress in the Board and the Circuit Court of Appeals, and Congress has declared: "This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code or otherwise."

See also In Re American Buslines, 151 F. Supp. 877, et seq, (D. Neb., 1957); Nathanason, Trustee v. N.L.R.B. 194 F. 2d 248, 250-251 (C.A. 1, 1952), N.L.R.B. v. Baldwin Locomotive Works, 128 F. 2d 39, 49-50 (C.A. 3, 1952). N.L.R.B. v. Bacheldeu 120 F. 2d 574, et seq. N.L.R.B. v. Schertzer, 360 F. 2d 152 (C.A.2, 1966)

It is well settled that the Board's jurisdiction to resolve unfair labor practices is superior to a Federal District Court's jurisdiction. Carey v. Westinghouse Electric Company, 375 U.S. 261 (1964); Smith Steel Workers v. A. O. Smith Corp., 420 F. 2d 1 (C.A. 7, 1965).

The intent of Congress, as explicated in the above decisions and in the NLRA itself, is that Board proceedings should not be interfered with by courts sitting in bankruptcy. CF. Airport Iron & Metal, Inc. (Unreported Decision, S.D.N.Y., 1974).

In view of the above cited cases, the orders are without jurisdiction, void, invalid and unenforceable and should be reversed.

IV THE ORDERS, DECISIONS DENYING APPELLANT VACATE THE STAY, DENY ORAL ARGUMENT ON APPEAL, CONTINUE AND PROCEED WITH THE APPEAL AS GRANTED TO ALL OTHERS IN LIKE AND SAME AND UNDER LIKE AND SAME CIRCUMSTANCES, ARE A VIOLATION OF EQUAL PROTECTION OF THE LAWS, MALICIOUS, PURPOSEFUL DISCRIMINATION, PREJUDICED AND BIAS AGAINST APPELLANT, CONTRARY TO LAWS, PRIOR DECISIONS AND AUTHORITIES AND ALL ORDERS, STIPULATIONS, ETC., OF CASES FILED IN THE BANKRUPTCY COURT IN THE INSTANT CASE AT BAR.

Mere fact award for Union Labor grievance hearing might make financing for debtor in arrangement more difficult, did not confer jurisdiction on Bankruptcy Court to stay labor grievance hearing. Re: New York 7 Worcester Exp. Inc. (C.C. N.Y. 1968) 294 F. Supp. 1163. See Jensen, (C.A. N.C. 1955) 218 F 2d 896.

U.S.C.A. Title II, Section 35, shows that a discharge in bankruptcy shall release bankrupt from his provable debts whether allowable in full or part, EXCEPT SUCH AS: (8) are liabilities for wilful and malicious injuries to the person or property of another and Act 1841 excluded. (See Section 3-14 Stat. 333 dealing with exemptions.)

Bankruptcy Court is unauthorized to stay proceedings in State Court Suit (in action tort). Family Small Loan v. Mason, C.C.A. Va. (1933) 67 F. 2d 207, 23 Am Bankr Rep. N.S. 626. Weiser D. C. N.Y. (1937) 19 F. Supp. 786. Hartsfield Co. v. Newlin (1934) 176 S. E. 516, 49 G. A. App. 546.

Liability for wilful and malicious injuries to person, etc., are not dischargeable for which punitive damages may be awarded, which term comprehends a tort committed with bad motive, etc., as to imply a disregard social obligations. Jaco v. Baker (1944) 148 P2d 938, 174 or. 191. Buttrick v. Gardner, (1934) 37 P 2d 927; 28 Am Bankr Rep. N.S. 780, 169 Okl. 566. Hill v. Harding, 107 U.S. 631, 2 S. Ct. 404; McBryde 99 F. 686. Re: United Wireless Telegraph Co. D. C.N.J.(1911)192 F. 238, 27 Am.. Bankr Rep. 1. Metz C. D. A. N.Y. (1925) 6 F 2d 962.

The bankruptcy of a party does not prevent the hearing and determination of an appeal from a judgment of a state court by the appellate court of the state and the bankruptcy court will not order a stay of the proceedings on appeal. Smith v. Meisenheimere (1898) 47 S. W. 1087, 104 Ky, 753.

Judgment for tort which an appeal is pending is not a final liquidation and does not constitute a provable claim. Fidelity Union Casualty Co. v. Hanson, Tex. Com. App. (1932) 44 SW 2d 985 20, Am Bankr. Rep. N.S. 339, 53 S. Ct. 12, 287 U. S. 599. Yates D. C. Cal. (1902) 114 F. 365.

A judgment for plaintiff in a personal injury action for actual and punitive damages is a judgment for wilful and malicious injury to the person and will not be discharged by bankruptcy proceedings. Bell Mfg. Co. v. Cross (1923) 117 S. E. 196, 123 S. C. 567.

An act performed in disregard of legal rights of another where wrongful in itself, done with wilful disregard of what one knows to be a duty and where is against public morals, etc., Robinson v. Early (1967) 56 Cal. Reprtr 183; 248 C. S. 2d 22. Ress v. Jensen 170 F 2d 348. And exempting from discharge liabilities of bankrupt. Wegiel v. Hogan (1953) 100 A 2d 349, 28 N.J. Super. 144. A judgment for punitive damages against bankrupt was based upon an indebtedness for wilful and malicious injury and was not dischargeable in bankruptcy. Harrison v. Donnelly C. C. A. Mo. (1946) 153 F 2d 588. And State Court suit pending at onset bankruptcy can proceed unaffected by bankruptcy. Ingram D. C. Ga. (1957) 156 F. Supp. 342, affirmed 249 F 2d 441, 78 S. Ct. 561, 356 U. S. 91.

Further where there are joint defendants with bankrupt, a stay cannot be granted against bankrupt. Friedman v. Zueifer (1911) 132 NYS 320, 74 Misc. 448. Hagt v. Freel N.W. 1869, 8 Abb Prac. N.S. 220. And in a case several joint defendants, one party is in bankruptcy, suit will not be stayed. Johnson v. Waxelbaum (1907) 58 S. E. 56, Canada (1910) 132 S. W. 754.

District Court should not attempt to consider what ought to be done about property alleged bankrupt until jurisdiction in bankruptcy settled and any DELAY based on consideration should be prevented by Mandamus. Howard C. C. A. Ala. (1924) 130 F 2d 534.

Duty of Judge is to determine PROMPTLY. Postponement determination issues await decision Supreme Court another case was abuse discretion and should be prevented by mandamus. If there is no case within bankruptcy court jurisdiction the court should so declare and leave all parties to their remedies elsewhere. It is the duty of the court to determine as promptly as may be. Howard. (supra).

Bankruptcy Court cannot stay proceeding instituted in State Court. Doolittle v. Mutual 249 F. 491. And Bankruptcy Court has no authority to stay action pending against bankrupt which is founded upon claim from which a discharge in bankruptcy would not be released. Het Calf v. Barker, N.Y. (1902) 23 S. Ct. 67.; 187 U.S. 165; 47 L. Ed. 122, 9 Am. Bankr Rep. 36. And a State Court action not an action claim provable or dischargeable in bankruptcy and bankruptcy Court had no jurisdiction interfere with enforcement of State Court judgment. Re: Cox. D. C. Ky (1940) 33 F. Supp. 796.

The files in the Bankruptcy Court in the case at bar shows voluminous orders, stipulations, etc., incases other parties that they were permitted the continuation of their actions in the State Courts against W. T. Grant Co., permitted the prosecution of the actions and any subsequent appeals or writs of review taken by any of the parties, etc., but the same and equal protection of the laws were denied to appellant herein. The appellant in her short search of the files, found approximately over 150 orders, or stipulations permitting other parties in like and similar actions, the continuation, prosecution, subsequent appeals or writs of review, etc. That as such the denial of an oral argument to appellant, as was granted to all others in like and similar circumstances and the subsequent denial to vacate the stay was a violation of appellant's Constitutional Rights to equal protection of the laws, it was malicious and purposeful discrimination, prejudiced and bias against appellant, contrary to all the decisions and authorities and orders and stipulations filed in all other parties in the case at bar.

That in view of the cited authorities and orders, stipulations, etc., filed in the Bankruptcy Court in the W. T. Grant Case, the orders of the Bankruptcy Judge, John Galgay was in violation of appellant's United States Constitutional Rights, malicious, purposeful discrimination, prejudice and biased against appellants and obstructing justice and fair treatment.

Further the prosecution of the action in the State Court will not interfere with the proper administration of the debtor's estate or a suitable arrangement can be effected without altering the rights of the unsecured creditor. In Mid-Jersey National Bank vs. Fidelity Mortgage Investors, NYLJ page 1 February 23, 1976, the court held it did not stay the appeal from an order granting summary judgment and that the bankruptcy rules are procedural in nature and may not affect substantive rights and that it is apparent that the automatic stay extended only to proceedings which could divest the debtor of property over which the court has jurisdiction.

The fact suit against bankrupt in State Court may result in diminution estate applicable in bankruptcy to payment his debts not conclusive reason for restraining prosecution that suit. Especially when personal liberty of bankrupt not threatened and when judgment sought for is not to be enforced against him, but against some one else. Re: Franklin D. C. Mass. (1901) 106 F. 666, 6 Am. Bankr. Rep. 285. Re: Horton Neb. (1900) 102 F. 986, 43 C. C. A. 87.

Judgment awarding compensative and punitive damages wrongful eviction arose same course conduct and no part hereof was dischargeable. Coen v. Zick (1972) 458 F 2d 326.

Personal suit against bankrupt not abated by bankruptcy. Bankruptcy Court retains jurisdiction over bankrupt person only. Barrett & Co. D. C. Ga. (1928) 27 F2d. 159, and suit may proceed to judgment to fix amount due by leave court in bankruptcy. Morton v. Switzer 93 U. S. 355.

Bankrupt court is without jurisdiction to enjoin prosecution in State Court of suit in tort and claimant may maintain action in State Court as result third parties in State Court not entitle to stay of action. Horton (supra).

V THE ADJOURNMENTS WERE DELITORY, DELAYING TACTICS TO DENY APPELLANT PROMPT DETERMINATION WHICH WAS CONTRARY TO LAW AND DUTIES OF THE COURT BELOW AND FOR THE MALICIOUS AND WILFUL INTENT TO HARASS APPELLANT AND CAUSE HER TO INCUR UNNECESSARY EXPENSES AND INJURE HER IN HER CLAIM AND OBSTRUCT HER FROM PROCEEDING PROPERLY AND FAIRLY.

Any delay based on consideration should be prevented by mandamus. Howard C. C. A. Ala. (1921.) 130 F 2d 534. The duty of the judge is to determine promptly. Postponement of determination of issues was abuse of discretion and should be prevented by mandamus, and if there is no case within the bankruptcy court jurisdiction, the court should so declare and leave all parties to their remedies elsewhere and it is the duty of the court to determine as promptly as may be. And District Court should not attempt to consider what ought to be done about property alleged bankrupt until jurisdiction in bankruptcy settled and any DELAY based on consideration should be prevented by mandamus. Howard. (supra.)

U. S. C. A. Title 11 Bankruptcy Section 701 et seq., Ch 10 and 11 is not designed to prolong without good cause or reason and at expense inverting public, corporation, life every debtor suffering from terminal financial illness. Norman Finance Trift Corp. v. Securities & Exchange Commission C. A. Okl. 1969; 415 F 2d 1199. Purpose Ch 11 is to provide rapid, economical method. Peoples Loan & Inv. Co. C. A. Ark. 1969; 410 F 2d 851. Webcor Inc. C.A. Ill. 1968,, 392 F 2d 893; 89 S. Ct. 113; 393 U. S. 837; 21 L. Ed. 2d 107.

In view of the above mentioned the adjournments were abuse of discretion contrary to cited authorities, delitroy tactics, causing appellant to unnecessarily incur expenses, causing her hardship, harassment, etc.

CONCLUSION

For the reasons stated, appellant respectfully submits that the orders and all the wrongs done to appellant should be reversed and a mandamus issued, and all expenses, disbursements, etc., incurred be taxed and appellant be reimbursed in this appeal and all prior proceedings.

October 1976

FRANCES SWINICK, PRO SE

Frances Swinick

TO: WEIL, GOTSHAL & MANGES

Attorneys for Charles G. Rodman, as
Trustee of W. T. Grant Company, Bankrupt
767 Fifth Avenue
New York, N. Y. 10022

In Re: W. T. GRANT COMPANY

Debtor

FRANCES SWINICK

Plaintiff

V.

BANKRUPTCY NO. 75 B 1735

W. T. GRANT COMPANY, et al.

Defendants.

SUMMONS AND NOTICE OF TRIAL

To the above-named defendants:

You are hereby summoned and required to serve upon FRANCES SWINICK, Plaintiff, Pro se, whose address is 3 High Street, New Brunswick, New Jersey, 08901, a motion or an answer to the complaint which is herewith served upon you, on or before January 21, 1976, and to file the motion or answer with this Court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

You are hereby notified that trial of the proceeding commenced by this complaint has been set for January 26, 1976, at 10:30 o'clock A. M. in Courtroom # 234, U. S. Courthouse, Foley Square, New York, N.Y. 10007.

Date of issuance: 12-29-75

JOHN J. GALGAY

BANKRUPTCY JUDGE

By

Shesett - Clerk

UNITED STATES COURTHOUSE

ss:

Foley Square - Rm 23

New York, N.Y. 10007

*United States District Court
Southern District of New York*

IN RE: W. T. GRANT COMPANY,

Debtor.

CIVIL ACTION
NO. 75-B--1735

COMPLAINT AND PETITION FOR RELIEF
FROM ALL PENDING STAYS

Pursuant to Rule 401, 601 and 11-44D of the Bankruptcy Rules, Frances Swinick, Pro-se, hereby shows the Court as follows:

1. Frances Swinick, (hereinafter "plaintiff"), a citizen of New Brunswick, New Jersey, is the plaintiff in a civil suit filed in the Superior Court of the State of New Jersey, which suit charges that W. T. Grant Company (hereinafter "defendant"), a corporation, discriminatorily, illegally and wrongfully discharged the plaintiff from her employment because of her legal activities in attempting to form a union at the branch store of the defendant in Franklin Township, Somerset County, New Jersey and discrimination in employment. The said suit alleges that the discharge was malicious, illegal and discriminatory. Additional defendants in the action are Anthony J. Remns, James F. Downs, Kenneth Bergen and Ray Fatenaupe, who were employees of defendant at the time that the illegal activity took place. The suit sets forth claims for lost wages, damage to her reputation, damages to union organizational plans, damage to health and punitive damages because of the discriminatory, illegal and malicious nature of the acts complained of and economic injury. The suit was filed September 6, 1974, and is presently in the Appellate Division of the Superior Court of the State of New Jersey on appeal from an order of the trial judge, dismissing the complaint on November 21, 1974, on the grounds that the cause of action is preempted by the National Labor Relations Act.

2. In addition, the plaintiff is also a complainant in an act

against the defendants heard before the N.L.R.B., case # 22-CA-5631 December 13, 1973, and after said trial, the Administrative Law Judge, Frank Itkin, rendered a decision in plaintiff's favor, ruling that the defendants unlawfully, illegally, wrongfully and discriminatorily discharged the plaintiff for engaging in legal activities in violation of the National Labor Relations Acts. The defendants appealed and the Board reversed the order of Judge Itkin. The plaintiff appealed to the United States Court of Appeals, Third Circuit, No. 75-1114, and an oral hearing was had October 2, 1975, and no decision rendered up-to-date, which plaintiff assumes the decision is delayed because of the stay and/or the defendants bankruptcy proceeding.

3. The cases in question should not be affected by the stay of litigation granted in the above-entitled Bankruptcy action for the following reasons.

4. The claims are partially for wages which are entitled to special protection under the bankruptcy laws and as such a stay of the actions would violate the spirit and the letter of the bankruptcy laws with respect to the protection of wages.

5. Because the actions or suits are for malicious, illegal and discriminatory actions, therefore, not the type of debts that can be discharged in a bankruptcy action.

6. Any delay in the litigations deeply prejudices the rights of the plaintiff because of the chance of the death of vital witnesses, the fading of memories, and the diminution of the chance for collection of a judgment which naturally occurs with the passage of time.

7. Even if the debt on the plaintiff is arguably the type of debt that can be discharged and/or diminished to a certain extent in a bankruptcy, the treatment of the plaintiff's debt will not be known for some time. Nothing is lost by allowing the action to proceed as long as execution on a judgment is suspended until the finish of the bankruptcy proceeding. Accordingly, any harm that the defendant suffers by the action being continued is clearly outweighed by the prejudice to the plaintiff of a continuation of the stay.

8. That it is in the interest of the plaintiff, defendants and the public at large that the discriminatory and malicious and

illegal practices of the defendants be remedied immediately. As long as any such practices exist, the defendants will be subject to possible additional liability which with respect to violation of civil rights, United States Constitutional Rights and Federally protected statutes rights, involving, freedom of speech, punishment for engaging in legal activities, equal protection of the laws, restraintment, coercion, intimidation, interferences in exercise of rights guaranteed by the United States Constitution and Federally protected statutes rights and deprivation of equal education and employment opportunities.

9. That immediate inquiry should be conducted into the illegal and discriminatory practices of the defendants which existed at the time of plaintiff's discharge and still exists up-to-date in that plaintiff is still suffering deprivation of her rights to employment because she engaged in attempting to form a union and exercised her rights, enforced and asserted her rights and as such to remedy any lingering discrimination and deprivation of rights.

10. The interest of all parties, as well as the public would be best served by granting to plaintiff relief from any stay which have been entered in the above-captioned action which caused and still causes plaintiff great economical injury and emotional and physical distresses.

11. And that an immediate order and decision be rendered by the U. S. Court of Appeals, Third Circuit, regarding the appeal heard October 2, 1975.

WHEREFORE, the plaintiff prays.

1. That an Order be entered immediately granting relief to the plaintiff, Frances Swinick, from any stays, automatic or otherwise, entered in the above-entitled action.

2. That she be allowed to proceed in the Appellate Division of the Superior Court of the State of New Jersey and also in the Supreme Court of the State of New Jersey in the event that her appeal is succesful in the Appellate Division.

3. That an order be entered granting relief from all stays which is impeding the decision and order on the appeal heard orally October 2, 1975, before the U. S. Court of Appeals, Third Circuit in the N.L. R.B. case.

4. That, alternatively, this case be set for an immediate hearing wherein resolution of this Complaint and Petition can be made.

5. That plaintiff recover the costs for the prosecution of this action.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
BANKRUPTCY DIVISION

IN RE: W. T. GRANT COMPANY,

Debtor.

CIVIL ACTION
NO. 75-B-1735

ORDER

Upon consideration of the Complaint and Petition for Relief From all Pending Stays filed by FRANCES SWINICK in the above-captioned action, IT IS HEREBY

ORDERED that FRANCES SWINICK be and is granted relief and be and is exempted from any and all stays of proceedings entered in the above-captioned action and that the cases of SWINICK v. W. T. GRANT COMPANY, et al., Civil action No. L-41343-73 and Appeal No. A 1648-74 be and is allowed to proceed and it is further

ORDERED that the National Labor Relations Board case Appeal No. 75-1114 be and is allowed to render decision and Order in said appeal.

This the day of , 1976.

JOHN J. EGALGAY
BANKRUPTCY JUDGE

FRANCES SWINICK
3 High Street
New Brunswick, New Jersey 08901

December 26, 1975

Honorable John J. Galgay
Bankruptcy Judge
Southern District of New York
Foley Square
New York, New York

Re: Bankruptcy Proceedings Involving W. T. Grant
Company; Bankruptcy File No. 75-B-1735;
complaint and Petition of Frances Swinick

Dear Judge Galgay:

Enclosed please find for filing, the original and copies of
a complaint and petition for relief from all pending stays to be
filed in the above-captioned action. Also a draft Order which
I prepared granting the relief I feel is required under the cir-
cumstances.

I feel that the important nature of employment discrimination
violation of my United States Constitutional Rights and Federally
protected statutes rights and the malicious conduct of the defend-
ants and the wage and punitive damages claims makes my case differ-
ent and wage claims are exempt. Further the continuing discrimi-
nation of the defendants practices makes whatever order necessary
to remedy any further lingering discrimination and economical in-
jury to me by the deprivation of equal employment opportunity in
that I am continuously being punished by denial of employment be-
cause of my legal activities.

I also feel that it is appropriate for the District Court to
enter a judgment with respect to costs. that Grant should bear and
what percentage of these costs the other defendants should bear.

Thus, under the circumstances I do not think that any stay
entered in the above-captioned action affects my New Jersey and
Philadelphia cases and appeals. I feel that it would be appropriate
for the New York Bankruptcy Court to enter an Order making clear to
counsel for all parties and Appeals Courts Judges that any stays
that have been entered in the Bankruptcy Court in the Southern
District of New York will be lifted with respect to my action and
appeals.

I am requesting that you enter an immediate order removing me
from any pending stay. If you do not thin my order appropriate, I
request that an immediate hearing be set.

I request one of your secretaries or clerks provide me infor-
mation as to whether I was listed as a creditor in Grant's bank-
ruptcy petition, when was the first meeting of creditors set or will
be held, what is the date for closing of filing of claims.

Respectfully yours,
Frances Swinick
FRANCES SWINICK

A-6

CC:Wachtell, Lipton, Rosen & Katz
Apruzzese & McDermott

Paul J. Spielberg and Vivian A. Miller

Thomas P. Quinn, Clerk and the U.S. Bankruptcy Court

copy 1/2/76 1- pending
to the court, I lose, South Plainfield stores and others

AO Form No. 82-Rev.
Form approved by
Comp. Gen., U. S.
June 26, 1953.

RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

OFFICE OF THE CLERK

NEW YORK CITY

RECEIVED
FROM

B/D Galgay

DATE

12/29/75

Docket No.

(Pl.)

(Def.)

75B 1735

ACCOUNT	AMOUNT	ACCOUNT	AMOUNT
Clerks Fees		Registry	
Bankruptcy		Cash Bail	ACCT. NO. 1
Filing Fee		Tender	
Referee's Sal. and Exp. Fund	<i>15.00</i>	Seaman's Wages	ACCT. NO. 2
		Unpaid Dividends In Bankruptcy	ACCT. NO. 3
Miscel. Earnings Copy			
Certificate		Other Moneys	
Search		Costs	
		Fine	
Nat'n Fees			
Pet. Nos.			
Decl. Nos.			

DEPUTY CLERK

J. Harbison

Total *15.00*

Cash ☒

Check ☐

MONEY ORDER ☐

63390

☆ U. S. GPO : 1974-500-058

A-7

W. T. GRANT COMPANY,	:	In Proceedings for
	:	an Arrangement
Debtor.	:	
----- x		No. 75 B 1735
FRANCES SWINICK,	:	ANSWER
	:	
Plaintiff,	:	
-against-	:	
W. T. GRANT COMPANY,	:	
	:	
Defendant.	:	
----- x		

W. T. Grant Company, the debtor in the above-entitled proceedings and the defendant in this adversary proceeding ("Grant"), by its attorneys, Wachtell, Lipton, Rosen & Katz, for its answer to the complaint of Frances Swinick:

1. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "1" of the complaint, except admits that an action was commenced by plaintiff against defendant in Superior Court of the State of New Jersey (the "New Jersey Action") and that such action was dismissed and is being appealed by plaintiff, and respectfully refers this Court to the complaint in the New Jersey Action for the claims alleged, the relief sought, the identities of the other defendants named therein and the basis for the dismissal.

2. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in

paragraph numbered "2" of the complaint, except admit that the plaintiff is a complainant in a proceeding commenced before the NLRB (the "NLRB Proceeding") which proceeding is currently on appeal before the United States Court of Appeals, Third Circuit, from a decision of the NLRB adverse to plaintiff.

3. Denies each and every allegation contained in paragraphs numbered "3", "4", "5", "6", "7", "8", "9" and "10" of the complaint.

4. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "11" of the complaint.

FIRST DEFENSE

5. The complaint fails to state a claim upon which relief can be granted against Grant.

SECOND DEFENSE

6. If the stay against continuation of the New Jersey Action and the NLRB Proceeding were to be vacated, Grant would be unnecessarily burdened and inconvenienced during the pendency of these arrangement proceedings, in that, among other things, Grant would be required to incur substantial costs, expenses and legal fees and the time of Grant's executives and employees would be diverted from these arrangement proceedings and the operation of Grant as a debtor-in-possession to the defense of the New Jersey Action and NLRB Proceeding, thereby tending to frustrate the successful rehabilitation of Grant in these arrangement proceedings

THIRD DEFENSE

7. Continuation of the New Jersey Action and NLRB Proceeding during the pendency of these arrangement proceedings would interfere with the exclusive jurisdiction of this Chapter XI Court over Grant and the assets and property of Grant's estate in violation of Section 311 of the Bankruptcy Act.

FOURTH DEFENSE

8. The claims asserted in the New Jersey Action and NLRB Proceeding are dischargeable pursuant to Section 17a of the Bankruptcy Act.

FIFTH DEFENSE

9. Assuming, arguendo, that as asserted in the complaint herein, the claims asserted in the New Jersey Action and NLRB Proceeding are not dischargeable pursuant to Section 17a of the Bankruptcy Act, such claims, if ultimately determined to be meritorious, may be dealt with in a plan of arrangement.

SIXTH DEFENSE

10. The Grant store wherein plaintiff had been employed was permanently closed on November 20, 1975, pursuant to prior order of this Court and the employment of the employees at such store was terminated.

11. By reason of the foregoing, the relief sought by plaintiff in the New Jersey Action and NLRB Proceeding insofar as it seeks reinstatement of employment is moot.

WHEREFORE, Grant demands judgment dismissing the complaint, together with the costs and disbursements of this adversary proceeding, and granting Grant such further and different relief as the Court may deem just and equitable.

Dated: New York, New York
January 21, 1976.

WACHTELL, LIPTON, ROSEN & KATZ
Attorneys for Defendant W. T. Grant
Company, Debtor

By *Thomas H. Rosen*
a Member of the Firm
Office and Post Office Address:
299 Park Avenue
New York, New York 10017
Tel. No. (212) 371-0200

W. T. GRANT COMPANY,	:	
	:	
Debtor,	:	
-----X	:	In Proceedings for
	:	an Arrangement
FRANCES SWINICK,	:	
	:	
Plaintiff,	:	No. 75 B 1735
	:	
-against-	:	
	:	REPLY
W. T. GRANT COMPANY,	:	
	:	
Defendant.	:	
-----X	:	

The following is plaintiff's reply to defendant's answer served on January 22, 1976.

1. The N.L.R.B. proceeding have been determined by the United States Court of Appeals for the Third Circuit in plaintiff's favor, December 30, 1975. Annexed hereto is a copy of of the Opinion and order of the court.

2. Grant would not be unnecessarily burdened and inconvenienced during pendency of the arrangement proceedings nor required to incur substantial costs, expenses or legal fees in view of the fact that all briefs, appendix and reply briefs have been filed in the appeal, which appeal is at the stage on the calendar awaiting oral argument which has been stayed as result of Grant's attorney in New Jersey obtaining an order staying the oral argument which ordinarily would have been scheduled to be heard sometime in October, 1976, which is reasonably assumed that the proceedings in this court will be disposed before October, 1976.

3. Further Grant's attorney need not make appearance for oral argument, but if he did, no additional legal fees will be incurred since he has been paid by Grant's and the individual co-defendants and further if he makes appearance for oral argument it will not incur additional legal fees, substantial costs or expenses, nor would divert its executives and employees from the arrangement proceedings and operation of the defense of the actions nor frustrate the successful rehabilitation in the arrangement proceedings.

A-12

A-12

4. Continuation of the said actions during pendency of the arrangement proceedings would not interfere with the jurisdiction of this Court or prejudice the defendants in any way but the continuation of the stay will prejudice me in many ways and cause me harm.

5. The claims asserted in the New Jersey action and N.L.R.B. proceedings are not dischargeable.

6. The closing of the Grant Store wherein I have been employed does not affect my claims nor moots my reinstatement nor denies me my back wages claim in view of the fact that the N.L.R.B. Administrative Law Judge, Frank Itkin, decision and order, (Page 9 of the attached decision and order,) Ordered W.T. Grant Company to offer me immediate and full reinstatement to my former job, or if that job no longer exists, to a substantially equivalent position without prejudice to my seniority or other rights and privileges and make me whole for any loss of earnings. Indeed I have seniority rights over other employees not employed at the Edison, Milessex, South Plainfield stores and others which I can be placed, pursuant to my seniority rights. Annexed hereto is Judge Frank Itkin's decision and order.

WHEREFORE, I respectfully request the relief prayed for in the petition be granted with costs and disbursements.

DATED: NEW BRUNSWICK, NEW JERSEY
January 22, 1976

*Copy filed - 12 50 PM
1/26/76
W. T. Grant Company
By: [Signature]*

February 7, 1976

The Honorable Judge John J. Galgay
U.S. District Court
Southern District of New York
New York, New York

RE: FRANCES SWINICK - vs - W.T. Grant Co. No. 75B1735

Dear Honorable Judge Galgay:

I am requesting modification or reconsideration of your erroneous decision denying me costs in the total amount of \$23.80 (\$15.00 docket fee, \$8.80 travel expenses) incurred by me as result of the malicious, illegal and wrongful stay obtained on my New Jersey State action, in violation of my statutory, Civil and U.S. Constitutional Rights and wrongful adjournments, requiring me to attend Court unnecessarily, January 26 and February 2, 1976, which second appearance did not bring about anything different than the first but only caused to inflict unethical practices against me, instill prejudice in your mind against me, influence you against me, causing you to change your proper first decision on the law that you will vacate the stay and let me proceed with the N.J. State action. However, your attitude changed on the unnecessary second appearance, showing your prejudice.

I object to the wilful, malicious false statements and misrepresentations of the facts presented to you by W.T. Grant's attorney, regarding the true issues in my complaint and cause of action in the N.J. State Court, which cause of action is TORT for wilful, malicious, discriminatory wrongful acts, in violation of my Civil and U.S. Constitutional Rights and Federally Protected Rights.

A-14

I am requesting an immediate determination and be
excused from being required to appear unnecessarily in
Court on March 4, 1976, since there will not be any
thing different to say or add that will bring about
that already has been said on the two prior
appearances, which adjournments and appearances
were and are an injustice, harassment, purposeful
discrimination and malicious at my expense and
suffering, to cause me unfair treatment, denial
equal protection of the laws, punishment for
acting pro se and because of my indigency,
dual justice towards rich and poor, to cause me
incur unnecessary expenses and costs, keep
me sitting in Court unjustly and unnecessarily
to keep me in bondage, prevent me from performing
my and attending to my daily and important
matters necessary for my health, welfare and
economic safety, to frustrate and obstruct me in
my important affairs, to instill hardships and
economical injuries upon me and injure and damage
me in equal employment and education opportunities
I also object that you ordered W.T. Grant attorney
to prepare and submit an Order permitting me
to proceed with the N.L.R.B. case, which was
done for the purpose that they delay doing so
and prevent me and my attorney to do so as
required since I was the prevailing party,
which up-to-date, the order has not been prepared
not submitted, nor have they gotten in touch
with my attorney, John O. Connell, 700 Easton
Ave. Somerset, New Jersey, as you ordered.
Further a simple proceeding as the instant one before you
should not be permitted to be delayed, dragged out
but an immediate and prompt determination made.
Attached hereto is my brief in support.
Respectfully Yours,
Franklin Swinick A-15

W. T. GRANT,

Debtor.

FRANCES SWINICK,

Plaintiff.

- against -

W. T. GRANT,

Defendant.

-X

Plaintiff's Brief

The denial of costs, on the grounds that costs are not allowable in bankruptcy proceedings is erroneous. In the case, Wendell, 152 F. 672, bankruptcy proceedings, the Court granted costs but reduced the sum for adequate compensation for attorneys labor; and in Northern, 192 F.2d 139, allowed tax costs in bankruptcy proceedings. Motion v. Universal, 232 F. 263, held that docket fees are costs; and in Realty, 53 F. Supp. 1013, bankruptcy corporate reorganization proceeding, docket fee ordinary statutory cost taxable against unsuccessful party.

"Civil action cognizable as a case in equity," as used in General Order 34, respecting taxing of cost of bankruptcy proceeding against unsuccessful party. Industrial Found Engineering Inc. B.C. Wis. (1964) 230 F. Supp. 154 Bankruptcy act section 12, sub. a (18) 11 U.S.C.A. Section 11 sub. a (18), Rule 54 (b) 28 U.S.C.A. Fed. Rules Civ. Procedure.

Successful plaintiff costs and expenses, not abuse discretion. 20th Century v. Goldwyn, 328 F.2d. 190, 35 S.Ct. 143, 379 U.S. 880.

Benefit to bankrupt is immaterial to question whether creditor who opposes granting discharge and is ~~entitled~~ successful, is entitled reimbursement, reasonable expenses. England v. American Trust Co. C.A. Cal. (1981) 67 F.2d 90 and creditor was entitled to reimbursement of costs and expenses incurred.

Unliquidated damages arising out of pure TORT is not a debt provable in bankruptcy. Buttrick v. Gardner (1939) 37 F.2d 927, 28 Am. Bankr. Rep. N.S. 780, 169 Atl. 566.

It was upheld in Hill v. Harding 107 U.S. 631, 2 S.Ct. 404, 7 Mc Clure 99 F. 686, that suit at law pending bankruptcy set forth a TORT, not a debt provable in bankruptcy.

Suits which contemplate some other relief than collection of a debt are not to be stayed, as their prosecution would not interfere with bankruptcy proceedings, RE: United Wireless Telegraph Co. D.C. N.J. (1911) 192 F. 238, 27 Am. Bankr. Rep. 1.

Courts duty determine whether debt dischargeable, if not, it was improvident to grant stay. Metz C.C.A. N.Y. (1925) 6 F.2d 962.

The bankruptcy of a party does not prevent the hearing and determination of an appeal from a judgment of a State Court by the Appellate Court of the State, and the Court of bankruptcy will not order a stay of the proceedings on appeal Smith v. Meisenheimer (1898) 47 S.W. 1037, 104 Ky. 753.

Judgment for TORT which an Appeal is pending is not a final liquidation and does not constitute a provable claim. Fidelity Union Casualty Co. v. Hanson Tex. Com. App. (1932) 44 SW2d 285, 26 Am. Bankr. Rep. N.S. 339, 53 S.Ct. 12, 287 U.S. 599. United D.C. Ct. (1902) 114 F. 365.

A judgment for plaintiff in a personal injury action for actual and punitive damages is a judgment for wilful and malicious injury to the person and will not be discharged in bankruptcy proceedings. Bell Mfg. Co. v. Cross (1923) 147 S.E. 196, 123 S.C. 567.

A judgment for punitive damages obtained against bankrupt in action for personal injuries caused by wanton and reckless conduct was based upon an indebtedness for wilful and malicious injury and was not dischargeable in bankruptcy. Harrison v. Donnelly C.C.A. Mo. (1946) 153 F.2d 588.

State Court suit pending at onset bankruptcy can proceed unaffected by bankruptcy. Engram D.C. Ga. (1957) 156 F. Supp. 342, affirmed 249 F.2d 441, 78 S.Ct. 561, 356 U.S. 91.

U.S.C.A. Title 11, Section 35, shows; a discharge in bankruptcy shall release bankrupt from his provable debts whether allowable in full or part, ~~but~~ except such as:

(8) are liabilities for willful and malicious injuries to the person or property of another. act. 1841 sec. 12 (see S. 35-10)

An act is malicious where act is willful or wanton and is performed in disregard of legal rights of another, where wrongful in itself, done with willful disregard of what one knows to be a duty, where is against public morals. Robinson v. Early (1967) 516 Cal. Rptr. 183; 248 C.A. 2d. 22. Rees v. Brown 170 F.

Acts done with utter disregard of rights and safety of others may constitute, "willful and malicious injury to person and property of another, exempting from discharge liabilities of bankrupt for willful and malicious injury to person or property of another." Weigel v. Hogan (1953) 100 A 2d 349, 28 N.J. Super. 144

Bankruptcy Court unauthorized to stay proceedings in State Court suit (in action, TORT). Family Small Loan v. Mason, C.C.A. Va. (1933) 67 F. 2d 207, 23 Am. Bankr. Rep. N.S. 626. And order bankruptcy court staying suit in State Court on causes of action (TORT) was erroneous. Weiser S.C. N.Y. (1937) 19 F. Supp. 786.

Action brought in TORT may not be stayed, since TORT liability is not released by discharge. Hartfield Co. v. Newlin (1934) 176 S.E. 516, 49 Ga. App. 546 (See U.S.C.A. Title 11 section 35 et seq.)

General discharge in Reorganization Proceedings will bar claims for willful and malicious injuries. American Service Co. v. Henderson C.C.A. N.C. (1941) 120 F. 2d 525 135 A.L.R. 1414 Am. Bankr. Rep. N.S. 308.

Liability for willful and malicious injuries to person or property another are not dischargeable. Same meaning as ascribed in Oregon to term malice for which punitive damages may be awarded, which term comprehends a TORT committed with bad motive, recklessly acts imply a disregard social obligations. Jaco v. Baker (1944) 148 P. 2d 938, 174 Or. 191. (See U.S.C.A. Title 11) A-18

State Court not grant stay against bankrupt jointly with others. Friedman v Joseph (1911) 132 NYS 320, 74 Misc 448, Hagst v Fland N.Y. 1869, 8 Stb Proc. N.S. 220.

In a case several joint defendants pending suit in State Court, one party in bankruptcy, but not all, suit will not be stayed. Johnson v Williams (1907) 58 SE 56, Canada (1910) 132 S.W. 754, 151 Mo. app. 704.

District Court should not attempt to consider what ought to be done about property alleged bankrupt until jurisdiction in bankruptcy settled and any delay based on consideration should be prevented by mandamus. Howard C.C.A. 40. (1924) 130 F.2d 534.

Duty Judge is to determine promptly. Postponement determination issues await decision Supreme Court another case was abuse discretion and should be prevented by mandamus, id.

If there is no case within bankruptcy Court jurisdiction the Court should so declare and leave all parties to their remedies elsewhere. It is the duty of the Court to determine as promptly as may be. Howard (Supra).

Conclusion

Based upon the foregoing an immediate determination should be made without further delay and dilatory tactics. Plaintiff should not be required to unnecessarily appear in Court; the stay in the State Court should be vacated immediately and promptly; plaintiff should be allowed to proceed with her suit, actions in the State Courts and costs and expenses granted.

Respectfully Submitted
Dated To Bureau 7 1971 Rancon Swinick, A-19

United States District Court
Southern District of New York

In Re

W.T. GRANT COMPANY,

Debtor

In Proceedings for an
Assignment

FRANCES SWINICK,

Plaintiff,

- against -

W.T. GRANT Company,

Defendant.

No. 75 B 1735

Objection to form
of Order and in-
sufficient Service
of Time to object

I am the plaintiff above named and submit that
I was served a notice of settlement and Order on
February 12, 1976, notifying me that on February
13, 1976, the Order will be presented for settlement
and signature which is insufficient time to give
me in case I object.

Further I object to the form of order in that
it did not include that it was ordered that
costs and disbursements were denied which
was and is wilful intent to violate my rights
to impede me from taking an appeal.

Therefore, I demand that it be included
in the Order.

DATED: February 13, 1976

Respectfully yours,
Frances Swinick

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

W. T. GRANT COMPANY,

Debtor.

No. 75 B 1735

FRANCES SWINICK,

ORDER

Plaintiff,:

-against-

W. T. GRANT COMPANY,

Defendant.:

Plaintiff Frances Swinick having commenced an adversary proceeding by summons and notice of trial and complaint dated December 29, 1975, which adversary proceeding seeks to have this Court vacate the stay imposed by Chapter XI Rule 11-44 so as to permit plaintiff to continue to prosecute the action now pending in the Superior Court of the State of New Jersey, Appellate Division, entitled Swinick v. W. T. Grant Company, et al., Civil Action No. L-41343-73 and Appeal No. 1648-74 (the "new Jersey Action") and the proceeding pending before the National Labor Relations Board (Case No. 22-CA-5631) (the "NLRB Proceeding"), which case was the subject of opinion of the United States Court of Appeals dated December 30, 1975 in the case entitled Swinick v. National Labor Relations Board, Docket No. 75-1114,

And due notice of hearing having been given and said
ADVERSARY PROCEEDING HAVING DULY COME ON TO BE HEARD ON JANUARY

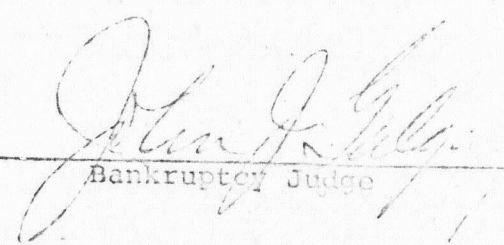
A-21a

26, 1976 and thereafter adjourned to February 2, 1976
after hearing Frances Swinick, plaintiff pro se, in support
of such motion, and Wachtell, Lipton, Rosen & Katz, attorneys
for Grant, by Laurence D. Cherkis, Esq., of counsel, in opposi-
tion therewith, and upon the said summons and complaint and
the exhibits thereto, the reply of plaintiff dated January 19,
1976 and the exhibits thereto in support of such motion and
the answer of Grant dated January 21, 1976 in opposition there-
to and upon the transcript of the hearing held on February 1,
1976, at which counsel for Grant consented to continuation of
the NLRB Proceeding, it is

ORDERED, that the relief sought in the complaint be
and the same is hereby granted and the Rule 11-44 stay and any
other stay in these proceedings are vacated only to the extent
that they shall not operate to prevent the NLRB Proceeding from
continuing in accordance with the said decision of the Court of
Appeals for the Third Circuit; and it is further

ORDERED, that the hearing on such part of the adver-
sary proceeding which seeks the continued prosecution of the
New Jersey Action be and the same is adjourned to March 1, 1976.

Dated: New York, New York
February 1, 1976.


Bankruptcy Judge

A-21b

FILED

MS. FRANCES SWINICK
3 High Street
New Brunswick, New Jersey 07101
COPY RECEIVED

FEB 27 1976

FEB 27 1976

3 ⁶⁰ PM February 27, 1976

JOHN J. GALGAY
Bachman, Lipton, Rosen & Katz
Theodore Gewertz
299 Park Avenue
New York, N.Y. 10017

ATTORNEYS FOR Debtor-in-Possession

RE: Swinick v. U.T. GRANT CO.
Docket No. 75 B 1735

Dear Mr. Gewertz:

I disagree with your opinion. You, as an officer of the Court, and Judge Galgay's Law Clerks did him a great injustice by not properly performing your duties, presenting proper briefs, etc., therefore, you and Judge Galgay's Law Clerks owe him an apology, not I.

You and the said Law Clerks made further errors in that, DURAND v. N. J. R. D.C. Ark. (1969) 296 F. Supp. 1949, shows that, in a bankruptcy case the District Court, sitting as a court of bankruptcy has exclusive jurisdiction of the bankrupt and his estate, HOWEVER, Congress has not seen fit to insulate receiver or trustee in bankruptcy from jurisdiction of National Labor Relations Board under National Labor Relations Act, Section 151 et seq., of Title 29 and as far as unfair labor practices are concerned jurisdiction of National Labor Relations Board under said act and section and title is exclusive, subject to review by the Federal Appellate Courts and that in the field the Federal District Courts, including bankruptcy courts, are without jurisdiction.

In view of the above-mentioned, cited cases in my brief and the article in the N.Y.L.J. February 23, 1976, an injustice was done to me. The adjournments were delays, harassment on me, causing me to incur unnecessary expenses and making unnecessary appearances in court, especially in the snow storm etc causing me to sit in the drafty court room which caused me to get the flu, costing me \$40.00 for medical needs, sick, impeding me for attending to important matters, subjecting me to unfair treatment and hardships which as an indigent could ill afford.

Regarding your statement January 26, 1976, that Grants were appellees in the U.S. Court of Appeals proceeding, etc., you are in error, since Grants did not have any standing as appellees in that proceeding.

As to your statement to imposition of costs being discretionary with the court, the definition of discretion, means sound discretion, not abuse of discretion.

I oppose your proposed order as it circumvents the laws, obstructs, interferes and violates my rights and interferes with the State Court jurisdiction. If you decide that Grants attorney need not appear for oral argument that is your privilege but don't try violating my rights to appear for oral argument which will not cost Grants anything nor don't try violating my rights to my cost in the state court action and the instant action in this court.

I strongly urge that a proper order be presented to the court and that is that the stay be vacated and I be allowed to proceed with the State Court action and costs be granted in the amount of \$50.00, otherwise, I have remedy by appeal and sue your firm and that of the New Jersey Grants attorneys in separate action which will be for a higher amount than \$50.00 and more expensive for appeals and defending a lawsuit for violation of my civil rights and U.S. Constitutional rights, etc.

BEST COPY AVAILABLE

Very truly yours,

FRANCES SWINICK

A-22

OBJECTION TO FORM OF ORDER

W. T. GRANT COMPANY,

Defendant. :

-----X

I object to the form of Order served on me about March 3, 1976, which is to be presented for settlement and signature to the Honorable John J. Galgay, Bankruptcy Judge, on the 9th day of March, 1978, at 10:00 A.M.

Upon all the papers submitted and filed with the Court and served on counsel the order is in violation of my rights, contrary to law, harassing and in abuse of discretion and in direct contravention with authorities and decisions of the United States Supreme Court.

DATED: March 5, 1976

Respectfully submitted

Frances Swinick
FRANCES SWINICK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In re :

W. T. GRANT COMPANY, : In Proceedings for
Debtor. : an Arrangement

----- x

FRANCES SWINICK, : ORDER

Plaintiff, :

-against- :

W. T. GRANT COMPANY, :

Defendant. :

----- x

Plaintiff Frances Swinick having commenced an adversary proceeding by summons and notice of trial and complaint dated December 29, 1975, which adversary proceeding seeks to have this Court vacate the stay imposed by Chapter XI Rule 11-44 so as to permit plaintiff to continue to prosecute the action now pending in the Superior Court of the State of New Jersey, Appellate Division, entitled Swinick v. W. T. Grant Company, et al., Civil Action No. L-41343-73 and Appeal No. 1648-74 (the "new Jersey Action") and the proceeding pending before the National Labor Relations Board (Case No. 22-CA-5631) (the "NLRB Proceeding"), which case was the subject of opinion of the United States Court of Appeals dated December 30, 1975 in the case entitled Swinick v. National Labor Relations Board, Docket No. 75-1114,

And due notice of hearing having been given and said adversary proceeding having duly come on to be heard on January

26, 1976 and thereafter adjourned to February 2, 1976 and March 1, 1976, and after hearing, on February 2, 1976, Frances Swinick, plaintiff pro se, in support of such motion, and Wachtell, Lipton, Rosen & Katz, attorneys for Grant, by Laurence D. Cherkis, Esq., of counsel, in connection therewith, and after hearing, on March 1, 1976, Wachtell, Lipton, Rosen & Katz, attorneys for Grant, by Theodore Gewertz, Esq., of counsel, in connection therewith, and upon the said summons and complaint and the exhibits thereto, the reply of plaintiff dated January 22, 1976 and the exhibits thereto in support of such motion and the answer of Grant dated January 21, 1976 in opposition thereto and upon the transcript of the hearings held on February 2, 1976 and March 1, 1976, and upon the consent of counsel for Grant to continuation of the NLRB Proceeding and the continuation of the New Jersey Action on certain conditions, it is

ORDERED, that the relief sought in the complaint be and the same is hereby granted and the Rule 11-44 stay and any other stay in these proceedings are vacated only to the extent: (a) that they shall not operate to prevent the NLRB Proceeding from continuing in accordance with the said decision of the Court of Appeals for the Third Circuit; and (b) that they shall not operate to prevent the Superior Court of the State of New Jersey, Appellate Division from determining the appeal now pending before it on the basis of the briefs of the parties but without oral argument; and it is further

ORDERED, that plaintiff's requests that she be awarded costs upon this motion be, and the same hereby is, denied.

Dated: New York, New York
March 10, 1976.

H. John J. Halgay
Bankruptcy Judge
A-25

WEIL GOTSHAL & MANGES

207 FIFTH AVENUE NEW YORK, N.Y. 10001

TELEPHONE (212) 675-6000

CABLE WEIGOMA

TELEX
403 378
423 44

July 7, 1976

Mr. Steven W. Townsend
Deputy Clerk
Supreme Court of New Jersey
State House Annex
Trenton, New Jersey 08625

Re: Charles G. Rodman, as Trustee of
W. T. Grant Company, Bankrupt (G-606)
Swinick v. Grant Docket No. 12759

Dear Mr. Townsend:

We are the attorneys for Charles G. Rodman, as Trustee of the estate of W. T. Grant Company, Bankrupt. I am writing you to confirm a telephone conversation on Tuesday afternoon, July 6, in which we discussed the effect of a stay which is now enjoining Frances Swinick from further prosecuting the above-entitled appeal.

On October 2, 1975, Grant filed a petition under Chapter XI Section 322 of the Bankruptcy Act. Thereafter, Grant was adjudged a bankrupt on April 13, 1976. As a result of Grant's adjudication as a bankrupt, Bankruptcy Rule 401(a) provides an automatic stay of any legal actions pending against Grant. Rule 401(a) states, in pertinent part, "The filing of a petition shall operate as a stay of the commencement or continuation of any action against the bankrupt...."

To supplement and amplify the automatic stay under Bankruptcy Rule 401(a), the bankruptcy court entered an order on April 13, 1976. I have enclosed a conformed copy of this order, and I direct you to paragraph 14 which begins on page 5 of the order. The relevant portions of that paragraph state

A-26

WEIL GOTSHAL & MANGES

Mr. Steven W. Townsend

July 7, 1976

Page Two

that "all persons...including any and all creditors...of Grant... be, and they hereby are, jointly and severally enjoined and stayed from commencing or continuing any action, court or other proceeding against Grant or its property..., except that this provision shall not apply to the extent that any stay may have been modified pursuant to an order of the court during the course of the Chapter XI case [which was pending between October 2, 1975, and April 13, 1976] and to any proceeding commenced in the bankruptcy court subsequent to October 2, 1975."

At the time Grant filed its Chapter XI petition on October 2, 1975, the appellant Frances Swinick was prosecuting an action against Grant in the state courts of New Jersey. Her action was automatically enjoined by Chapter XI Rule 11-44, a stay provision similar to Bankruptcy Rule 401(a). Ms. Swinick subsequently moved in the bankruptcy court for an order modifying the automatic stay so that her state court action could go forward. On March 10, 1976, the bankruptcy judge entered an order, a copy of which is enclosed. As you can see from reading the first decretal paragraph of the March 10 order, the automatic stay under Chapter XI Rule 11-44 was only modified to permit the Superior Court of the State of New Jersey, Appellate Division, to decide, on the basis of previously filed briefs, the appeal then pending before that court. Bankruptcy Judge Galgay's order of March 10 did not authorize Ms. Swinick to press an appeal to the Supreme Court of New Jersey. Should Ms. Swinick wish to take an appeal to the Supreme Court, the proper procedure would be for her to apply in the bankruptcy court for a further modification of the automatic stay under Bankruptcy Rule 401(a) and the order of April 13, 1976.

As a result of Bankruptcy Rule 401(a) and the orders of March 10 and April 13, the Trustee in bankruptcy of W. T. Grant Company takes the position that Ms. Swinick is not authorized to perfect her appeal to the Supreme Court of New Jersey.

A-27a

WEIL GOTSHAL & MANGES

Mr. Steven W. Townsend
July 7, 1976
Page Three

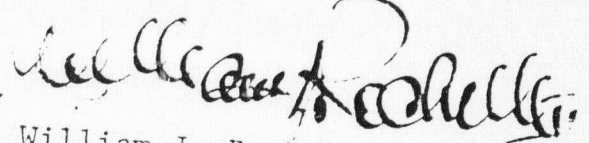
I bring these facts to your attention so that the Supreme Court of New Jersey may determine what further action, if any, it may wish to take on the above-entitled appeal. Should the Court decide either that the stays are not applicable to this appeal or that the appeal should be allowed to go forward, I would appreciate your so informing me. In the event that the Supreme Court determines to allow the appeal to proceed, the Trustee would appreciate having sufficient notice so that he may consider what other recourse is available to him.

If you have any questions, please do not hesitate to call me.

Respectfully,

WEIL, GOTSHAL & MANGES

By



William J. Rochelle, III

WJR:BEK
cc: Ms. Frances Swinick

A-27-b

United States District Court
Southern District of New York

In Re: W. F. Grant Company

FRANCES SWINICK,

Plaintiff,

VS

W. F. Grant Company, et al

Defendants.

Bankruptcy

NO. 75 B 1725

Summons and Notice of Trial

To the above-named defendants:

You are hereby summoned and required to serve upon FRANCES SWINICK, plaintiff, Pro se, whose address is 3 High Street, New Brunswick New Jersey, 08901 a motion or an answer to the complaint which is herewith served upon you, on or before August 9, 1976 and to file the motion or answer with this Court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

You are hereby notified that trial of the foregoing commenced by this Complaint has been set for August 18, 1976 at 10:30 o'clock A.M. in Courtroom Number 234, U.S. Courthouse, Foley Square, N.Y. N.Y.

John J. Halgasy
Bankruptcy Judge

A-28

By

Clerk United States Courthouse
Foley Square - Room 230

United States District Court
Southern District of New York

In Re

W.T. GRANT Company,

Debtor
FRANCES SWINICK, -----X

Plaintiff,

NO. 75 B 1735

- against -

W.T. GRANT Company,

Defendant. -----X

Complaint and Petition For Relief From all pending Stays

Pursuant to Rule 401, 601 and 11-440 of the Bankruptcy Rules,
FRANCES SWINICK, Prose, hereby shows the Court as follows:

1. That I am a citizen of New Brunswick New Jersey and the plaintiff in a civil suit filed in the Superior Court of the State of N.J. which suit charges that W.T. Grant Company, Anthony J. Renna, James F. Downs, Kenneth Bergen and Ray Patenaude, discriminatorily, illegally and wrongfully discharged me from my employment because of my legal activities in attempting to form a union at the Branch store, Franklin Township, Somerset N.J. and discrimination in employment maliciously, illegally and discriminatorily.
2. The suit sets forth claims of damages to my reputation, union organizational plans, health, expenses and costs defending and prosecuting actions, protecting, enforcing my rights, lost wages, suffer. of indignities, humiliations, economic injuries, etc., and punitive damages.
3. That the suit was filed September 6, 1974, and was dismissed November 21, 1974, and an appeal to the Appellate Division was pending at the time defendant, W.T. Grant, filed a petition under Chapter XI Section 322 of the Bankruptcy Act.
4. That about December 29, 1975, I moved this Court for an Order vacating the stay and to proceed with my action and costs.
5. That on March 10, 1976, this Court, Judge Holguy, signed an Order granting the relief sought in the complaint vacating the stay to the extent not to prevent me to proceed with the appeal in the Superior Court of New Jersey Appellate Division without delay.

6. That I request judicial notice be taken of all the papers and orders filed in this court and make it a part hereof.

7. That pursuant to a formed conspiracy the attorneys involved in this case and the Clerk of the Appellate Division, proceeded with the action without an oral argument, and I received a copy of an unfiled, ^{unfiled} attempted order May 28, 1976, indicating that on June 1, 1976, Judges Matthews, Loda and Wolgar, decided the appeal affirming substantially for the reasons set forth in the oral decision of Judge DiGirolamo.

8. That I served and filed papers, notice of appeal, Petition for Certification, etc., to the Supreme Court of New Jersey, Annexed hereto are copies and I make a part hereof.

9. That defendant's present attorney Weil, Gotschal & Manges, by William J. Rochelle, III Charles B. Rodman as trustee of W. G. L. & Co. wrote the Clerk of the Supreme Court of New Jersey a letter indicating that the Order of Judge Hagay, March 16, 1976, was only modified to permit ~~me~~ the Superior Court of the State of New Jersey, Appellate Division, to decide on the filed briefs and did not authorize me to press an appeal to the Supreme Court of New Jersey, which I opposed.

10. As result I received a letter from the clerk of the Supreme Court of New Jersey indicating it is unable to process my petition for Certification. At this time since it appears the proceedings are enjoined pursuant to Bankruptcy Rule 401 (a).

11. In view of the above mentioned I demand an order be entered immediately granting relief from all stays, all oppressions, suppressions, hindrances, obstructions, interferences of my rights to proceed in the instant appeal and all proceedings, etc., to the New Jersey Supreme Court and that I proceed further to the final end of this action and continue to the final end with this action, whether it be further appealable to the U.S. Supreme Court or trial in the N.J. State Courts or any other and all remedies I have a right too, and that I recover all expenses, disbursements as result of the unnecessary requirements & in-judgments thus acted.

Dated: July 19, 1976

Respectfully Submitted
Frances Swinick
FRANCES SWINICK A-30

In the United States District Court
For the Southern District of New York
Bankruptcy Division

RE: W.T. GRANT Company

Civil action
No. 75 C 1735

Order

Upon consideration of the complaint, petition and exhibit for relief from all pending stays filed by FRANCES SWINICK in the above-captioned action, It is hereby

Ordered that FRANCES SWINICK be and is granted relief and is exempted from any and all stays entered in the above-captioned action and that the action Swinick v. W.T. GRANT Company, James E. Downs, Anthony J. Renner, Kenneth Bergen and Ray Batensaunder, Civil action No. L-41343-73 be and is allowed to proceed to the final end, including proceeding with all appeals and trial and that the stay is vacated.

This the day of

1976.

WEIL, GOTSHAL & MANGES

767 FIFTH AVENUE • NEW YORK, N. Y. 10022
TELEPHONE (212) PLAZA 8-7800

CABLE WEGOMA

TELEX
424261
423144

HORACE S. MANGES
COUNSEL

July 27, 1976

Ms. Frances Swinick
3 High Street
New Brunswick, New Jersey 08901

Re: Rodman - Grant
G-606

Dear Ms. Swinick:

We have received your summons and complaint that you filed with the bankruptcy court asking for a modification of the automatic stay.

A clerk in the bankruptcy court today informed me that the court will not be able to have your hearing on the date you selected, August 18, 1976. Rather, Judge Galgay has set your hearing for Tuesday, August 24 at 10:30 a.m. This is a time at which Judge Galgay is able to hear matters such as yours.

If you have any questions, please do not hesitate to call me.

Sincerely,

WEIL, GOTSHAL & MANGES

By


William J. Rochelle, III

WJR:mac

cc: Honorable John J. Galgay

A-32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

W. T. GRANT COMPANY,

Bankrupt,

FRANCES SWINICK,

Plaintiff,

-against-

: Bankruptcy No. 75 B 1735

CHARLES G. RODMAN, as Trustee of
W. T. GRANT COMPANY, Bankrupt,

:

:

Defendant.

:

-----X

ANSWER

Charles G. Rodman, as Trustee of the estate of W. T. Grant Company, Bankrupt ("Grant"), for his answer to the complaint of plaintiff Frances Swinick, dated July 19, 1976, respectfully alleges:

1. The Trustee is without knowledge or information sufficient to form a belief as to the truth of each and every averment set forth in paragraphs 1, 2, 3, 6, 8 and 10 of the complaint.

2. Denies each and every averment set forth in paragraph 11 of the complaint.

3. Admits the averments set forth in paragraph 4 of the complaint except respectfully refers the court to plaintiff's complaint dated December 22, 1974, captioned as above.

4. Denies each and every averment set forth in paragraph 5 of the complaint except respectfully refers the court to the order of March 10, 1976, for the terms and provisions thereof.

5. Denies each and every averment set forth in paragraph 7 of the complaint except respectfully refers the court to the opinion of the Appellate Division of the Superior Court of New Jersey, dated June 1, 1976, for the contents thereof.

6. Admits the averments set forth in paragraph 9 of the complaint except respectfully refers the court to the letter by William J. Rochelle, III, dated July 7, 1976, for the contents thereof.

FOR A FIRST AFFIRMATIVE DEFENSE

7. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

8. Upon information and belief, the summons and notice of trial served upon the Trustee was not issued by the bankruptcy judge as required by Bankruptcy Rule 704(a).

9. Upon information and belief, the plaintiff has not paid the \$15.00 filing fee required for the issuance of a summons and notice of trial.

10. By virtue of the matters set forth in paragraphs 8 and 9 above, the process served upon the Trustee is insufficient and this adversary proceeding has not been properly commenced.

FOR A THIRD AFFIRMATIVE DEFENSE

11. The Superior Court of the State of New Jersey, in the first instance, and the Appellate Division of the Superior Court of New Jersey, on appeal, both concluded that any claims which plaintiff may otherwise have against Grant under state law have been preempted by the National Labor Relations Act.

12. Since the courts of the State of New Jersey have therefore consistently held that plaintiff has no claims against Grant under state law, the estate of Grant would be subjected to a burdensome and unnecessary expense if the automatic stay of suits under Bankruptcy Rule 401(a) were modified to permit plaintiff to perfect her appeal to the Supreme Court of the State of New Jersey.

FOR A FOURTH AFFIRMATIVE DEFENSE

13. The Trustee reasserts and realleges each and every averment set forth in paragraph 11 above.

14. Even if plaintiff had a valid claim against Grant under state law, plaintiff's claim would constitute a general, unsecured claim in Grant's bankruptcy case.

15. As such, the bankruptcy court is the appropriate forum to determine the validity and amount of any claim that the plaintiff may file in this bankruptcy case.

FOR A FIFTH AFFIRMATIVE DEFENSE

16. Until such time as the Trustee has determined to object to any claim that the plaintiff may file in this bankruptcy case, the Trustee should not be required to

the substantial and unnecessary expense of litigating against the plaintiff, in the state courts of New Jersey or elsewhere, as to the validity or amount of any claim that the plaintiff may have against Grant.

FOR A FIRST COUNTERCLAIM

17. On or about October 2, 1975, Grant filed a petition for an arrangement under Chapter XI, Section 322 of the Bankruptcy Act and Chapter XI Rule 11-6. Thereafter and by order dated April 13, 1976, Grant was adjudged a bankrupt under the Bankruptcy Act.

18. On November 19, 1975, Charles G. Rodman was elected standby-trustee in accordance with Chapter XI Rule 11-27. On April 13, 1976, Mr. Rodman qualified as trustee herein and has since acted in that capacity.

19. At the time Grant filed its petition for an arrangement, it was engaged in the business of operating and managing a chain of retail outlets for the sale of general lines of merchandise. Grant operated a total of 1,070 stores in 40 states and employed approximately 65,000.

20. By the service of a summons and complaint dated December 29, 1975, a copy of which is annexed hereto as Exhibit "A," the plaintiff commenced an adversary proceeding against Grant, as debtor-in-possession, to modify the automatic stay of suits pursuant to Chapter XI Rule 11-44(d). In her complaint, the plaintiff sought the elimination of any stays outstanding against her. Specifically, the plaintiff asked to be allowed

to proceed with her appeal in the state courts of New Jersey. Plaintiff's appeal was from an order of the Superior Court of New Jersey which had dismissed plaintiff's claim against Grant on the grounds that any claim that plaintiff may have was preempted by the National Labor Relations Act.

21. In addition, plaintiff requested, in her adversary proceeding, to be allowed to go forward with the proceeding she had commenced before the National Labor Relations Board ("NLRB Proceeding").

22. Upon information and belief, plaintiff's claims in both the state court and in the NLRB Proceeding are based upon an alleged wrongful dismissal for which plaintiff seeks, as relief, reinstatement and back pay.

23. On March 10, 1976, this court entered an order, a copy of which is annexed hereto as Exhibit "B," granting, in part, the relief sought by plaintiff.

24. The aforesaid order of March 10, 1976, stated that the automatic stay under Chapter XI Rule 11-44 "shall not operate to prevent the NLRB Proceeding from continuing in accordance with the said decision of the Court of Appeals for the Third Circuit...." A copy of the opinion of the United States Court of Appeals for the Third Circuit, as referred to in the order of March 10, 1976, is annexed hereto as Exhibit "C."

25. The opinion of the Third Circuit vacated the order of the National Labor Relations Board which had reversed the conclusions of the administrative judge and denied plaintiff's NLRB Proceeding against Grant.

26. The Third Circuit's opinion remanded the case to the NLRB "for the purpose of taking additional evidence."

27. It is evident from reading the opinion of the Third Circuit that extensive, complicated, and time-consuming evidentiary hearings must be held before the NLRB.

28. Pursuant to paragraph 14 of the order of this court dated April 13, 1976, the automatic stay under Bankruptcy Rule 401(a) "shall not apply to the extent that any stay may have been modified pursuant to an order of the Court during the course of the Chapter XI case...."

29. Therefore, plaintiff is free to continue the prosecution of the NLRB Proceeding.

30. Since Grant was adjudged a bankrupt subsequent to this court's order of March 10, 1976, which permitted plaintiff to continue with the NLRB Proceeding, the primary relief sought by the plaintiff in the NLRB Proceeding -- reinstatement to her former position -- is no longer possible.

31. Back pay, other relief sought by plaintiff in the NLRB Proceeding, is, in any event, a general, unsecured claim against Grant.

32. In this context, the estate would be subjected to an unnecessary and burdensome expense if the Trustee were required to expend the assets of the estate in defending the NLRB Proceeding.

33. At least until such time as the Trustee determines to object to any claim that plaintiff

bankruptcy case, the Trustee respectfully requests that the court vacate its order of March 10, 1976, and enjoin plaintiff from continuing her prosecution of the NLRB Proceeding.

WHEREFORE, the Trustee respectfully requests that the court enter an order (1) dismissing the complaint in its entirety; (2) vacating the order of March 10, 1976, to the extent that said order permitted plaintiff to continue her prosecution of the NLRB Proceeding, and (3) granting such other and further relief as is just.

Dated: New York, New York
August 6, 1976

WEIL, GOTSHAL & MANGES and
BALLON, STOLL & ITZLER,
Co-Counsel to the Trustee
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

By 

A Member of the Firm of
Weil, Gotshal & Manges

United States District Court
Southern District of New York

In Re

W. T. Grant Company

Bankrupt,

FRANCES SWINICK,

Plaintiff

Bankruptcy No. 75 B 1735

Reply TO Answer and

Answer TO Counterclaim

- against -

Charles E. Podman, as Trustee
of W. T. Grant Company, Bankrupt,

Defendant.

Reply

Frances Swinick, plaintiff, for her reply to the answer
respectfully alleges:

1. The same practice and procedure was acted upon in
the prior proceeding which this Court heard and rendered an
order and which attorneys practice.

2. An application was filed and served in the instant action
to be relieved of paying filing fees, etc., in forma pauperis
pursuant to title 28 U.S.C. Section 1915 (a) which entitles
one to be relieved from paying the filing fee which this
Court granted but setting a date for the hearing.

3. The Superior Court decision and the Appellate Division of the
New York State Court of Appeals were rendered and obtained by impropriety, Corruption,
Conspiracy, contrary to law and in violation of my rights and/or
was not properly presented to the appeal judges properly, nor did
the judge hear it properly on the merits but arbitrarily
Corruption, etc., the Clerks typed in the words of
obstruction, harassment, a formal conspiracy to defendant and
persecution against me and discrimination and deprivation of
my rights which was mailed to me May 28, knowing that it
was decided June 1, 1976.

4. Further of no concern of this Court that the lower courts
rendered its decision against me upon a wrongful opinion
contrary to law since I have a right to appeal to the higher
courts concerning the U.S. Supreme Court from the wrongful
opinion as have many attorneys done and which I have done
and which the higher courts reversed the lower courts wrongful
opinion. Since there is no rational reasoning in the statement
that because the lower courts ruled against me that I have
no right to appeal to the higher courts and sue for the
conspiracy to violate my rights in view of the fact that
many other union members and I know that the
opinions were rendered wrongfully and contrary to law.

A-40

United States Court of Appeals
For the Second Circuit

-----X
FRANCES SWINICK

Plaintiff-Appellant

v
W.T. Grant

Defendant-Appellee
-----X

Certification In Lieu
of Affidavit of
Proof of Service
Docket # 76-5031

Frances Swinick, herewith certifies to the following:

That on November 1, 1976, I served the within copies,
of 2 briefs and appendix upon Weil, Hotshel & Manges,
attorneys for Appellee, at 767 Fifth Avenue, New York, N.Y.
10022, the address designated by said attorneys for
that purpose by depositing true copies of same in
enclosed post-paid properly addressed wrapper in
a Post Office within the State of New Jersey.

I certify that the foregoing statements made by
me are true. I am aware that if any of the
foregoing statements made by me are willfully false,
I am subject to punishment.

Dated: November 1, 1976
New Jersey

Frances Swinick
FRANCES SWINICK